

radioactive waste at a geologic repository operations area, the Commission shall review those issues that have not been contested in the proceeding before the Presiding Officer but about which the Director must make appropriate findings prior to the issuance of such a license. The Director shall issue a construction authorization or a license to receive and possess high-level radioactive waste at a geologic repository operations area only after written notification from the Commission of its completion of its review under this paragraph and of its determination that it is appropriate for the Director to issue such a construction authorization or license. This Commission review of uncontested issues is not part of the adjudicatory proceeding.

(3) No suspension of the effectiveness of a Presiding Officer's initial decision or postponement of the Director's issuance of a construction authorization or license that results from a Commission supervisory examination of contested issues under paragraph (c)(1) of this section or a review of uncontested issues under paragraph (c)(2) of this section will be entered except in writing with a statement of the reasons. Such suspension or postponement will be limited to such period as is necessary for the Commission to resolve the matters at issue. If the supervisory examination results in a suspension of the effectiveness of the Presiding Officer's initial decision under paragraph (c)(1) of this section, the Commission will take review of the decision *sua sponte* and further proceedings relative to the contested matters at issue will be in accordance with procedures for participation by the DOE, the NRC staff, or other parties and interested governmental participants to the Presiding Officer proceeding established by the Commission in its written statement of reasons. If a postponement results from a review under paragraph (c)(2) of this section, comments on the uncontested matters at issue may be filed by the DOE within ten days of service of the Commission's written statement.

[54 FR 14944, Apr. 14, 1989, as amended at 56 FR 7797, Feb. 26, 1991; 66 FR 55789, Nov. 2, 2001]

§ 2.1025 Authority of the Presiding Officer to dispose of certain issues on the pleadings.

(a) Any party may move, with or without supporting affidavits, for a decision by the Presiding Officer in that party's favor as to all or any part of the matters involved in the proceeding. The moving party shall annex to the motion a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Motions may be filed at any time. Any other party may file an answer supporting or opposing the motion, with or without affidavits, within twenty (20) days after service of the motion. The party shall annex to any answer opposing the motion a separate, short, and concise, statement of the material facts as to which it is contended there exists a genuine issue to be heard. All material facts set forth in the statement to be filed by the moving party will be deemed to be admitted unless controverted by the statement required to be filed by the opposing party. The opposing party may, within ten (10) days after service, respond in writing to new facts and arguments presented in any statement filed in support of the motion. No further supporting statements or responses thereto may be entertained. The Presiding Officer may dismiss summarily or hold in abeyance motions filed shortly before the hearing commences or during the hearing if the other parties or the Presiding Officer would be required to divert substantial resources from the hearing in order to respond adequately to the motion.

(b) Affidavits must set forth those facts that would be admissible in evidence and show affirmatively that the affiant is competent to testify to the matters stated therein. The Presiding Officer may permit affidavits to be supplemented or opposed by further affidavits. When a motion for summary disposition is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of its answer; its answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue of fact. If no such answer

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is filed, the decision sought, if appropriate, must be rendered.

(c) The Presiding Officer shall render the decision sought if the filings in the proceeding show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. However, in any proceeding involving a construction authorization for a geologic repository operations area, the procedure described in this section may be used only for the determination of specific subordinate issues and may not be used to determine the ultimate issue as to whether the authorization must be issued.

[56 FR 7798, Feb. 26, 1991]

§ 2.1026 Schedule.

(a) Subject to paragraphs (b) and (c) of this section, the Presiding Officer shall adhere to the schedule set forth in appendix D of this part.

(b)(1) Pursuant to § 2.711, the Presiding Officer may approve extensions of no more than 15 days beyond any required time set forth in this subpart for a filing by a party to the proceeding. Except in the case of exceptional and unforeseen circumstances, requests for extensions of more than 15 days must be filed no later than 5 days in advance of the required time set forth in this subpart for a filing by a party to the proceeding.

(2) Extensions beyond 15 days must be referred to the Commission. If the Commission does not disapprove the extension within 10 days of receiving the request, the extension will be effective. If the Commission disapproves the extension, the date which was the subject of the extension request will be set for 5 days after the Commission's disapproval action.

(c)(1) The Presiding Officer may delay the issuance of an order up to thirty days beyond the time set forth for the issuance in appendix D.

(2) If the Presiding Officer anticipates that the issuance of an order will not occur until after the thirty day extension specified in paragraph (c)(1) of this section, the Presiding Officer shall notify the Commission at least ten days in advance of the scheduled date

for the milestone and provide a justification for the delay.

[56 FR 7798, Feb. 26, 1991]

§ 2.1027 Sua Sponte.

In any initial decision in a proceeding on an application to receive and possess waste at a geologic repository operations area, the Presiding Officer, other than the Commission, shall make findings of fact and conclusions of law on, and otherwise give consideration to, only those matters put into controversy by the parties and determined to be litigable issues in the proceeding.

[56 FR 7798, Feb. 26, 1991]

Subpart K—Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors

SOURCE: 50 FR 41670, Oct. 15, 1985, unless otherwise noted.

§ 2.1101 Purpose.

The regulations in this subpart establish hybrid hearing procedures, as authorized by section 134 of the Nuclear Waste Policy Act of 1982 (96 Stat. 2230), to be used at the request of any party in certain contested proceedings on applications for a license or license amendment to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power plant. These procedures are intended to encourage and expedite onsite expansion of spent nuclear fuel storage capacity.

§ 2.1103 Scope.

The procedures in this subpart apply to contested proceedings on applications filed after January 7, 1983, for a license or license amendment under part 50 of this chapter, to expand the spent fuel storage capacity at the site of a civilian nuclear power plant, through the use of high density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage